85-292

No

Supreme Court, U.S.
FILED
AUG 19 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

October Term 1985

THOMAS G. BECKHAM,

Petitioner

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

Ronald K. Lawn*
John M. Leiter
Post Office Box 7516
Myrtle Beach, SC 29577
(803) 449-1451

Kenneth A. Richstad
Post Office Box 7727
Columbia, S.C. 29202
(803) 254-8000

Counsel for Petitioner

* Counsel of Record

August 19, 1985

---

116 pp

QUESTION PRESENTED

Did the Court of Appeals exceed its authority under the Seventh Amendment to the United States Constitution and under Rule 50, F.R.Civ.P., by reversing a jury verdict which was based on the jury's estimation of the credibility of witnesses?[1]

---

[1]Besides this case, two other cases from the Fourth Circuit will be bought before the Supreme Court on Petitions for Writ of Certiorari presenting the same question. These cases are Owens v. Bourns, Inc., 83-2059 (June 27, 1985) (Published); and Redic v. Gary H. Watts Realty Company, 762 F.2d 1181 (4th Cir. 1985).

Petitioner asks that this petition be combined for consideration with the petitions to be filed in the cases just mentioned, all of which question the Fourth Circuit's consistent refusal to restrict its review to errors of law.

PARTIES

The parties to this proceeding are petitioner Thomas G. Beckham, and respondents J. Gordon Harris, Horace Jordan, Winfred Gore, Elton Johnson, Bobby Johnson, J.D. Flowers, Joshua Vaught, Worth Lee, A.B. Grainger, Bill Ward, Harold Rogers and James O. Dunn.

Table of Contents

	Page
Question Presented	i
Parties	ii
Table of Contents	iii
Table of Authorities	v
Opinion Below	2
Jurisdiction	2
Constitutional Provision, Statute, Act and Rule Involved	3
Statement of the Case	4
Reason for Granting the Writ	14
Conclusion	27
Appendix A Opinion of the Court of Appeals	1a
Appendix B Order of the Fourth Circuit Denying the Petition for Rehearing	25a
Appendix C Order of the Supreme Court Extending the Time to File Petition for Writ of Certiorari	27a
Appendix D Excerpts of Trial Record	29a

Appendix E
Excerpt of Post-Trial
Motion Hearing 79a

Appendix F
Excerpt from Petitioner's Brief of
Appellee to the Fourth Circuit . 87a

Appendix G
Constitutional Amendment, Statute
Rule and State Statute 105a

Appendix H
Summary of Recent Fourth
Circuit Cases Reviewing Issues
of Fact 107a

TABLE OF AUTHORITIES

Page

Cases:

Anderson v. City of Bessemer City, N.C., ___U.S.___,___, 105 S.Ct 1504(1985) 15,16,17

Case v. Morrisette, 475 F.2d 1300 (D.C.Cir 1973) . . . 17

Cleveland Board of Education v. Loudermill, ___U.S.___, 105 S.Ct. 1487(1985) . 19

Gilbert v. Scratch N Smell, Inc. 756 F.2d 320(4th Cir.1985) 15

Raferty v. Scott, 756 F.2d 335(4th Cir. 1985) . . . 16

United States v. United States Gypsum Co., 333 U.S. 364, 68 S.Ct. 525(1948) . 17

Wainwright v. Sykes, 433 U.S. 72,97 S.Ct. 2497(1977). . 15

Constitution and Statutes:

United States Constitution, Amendment VII 17

42 U.S.C. §1983 (1982) 3

Act No. 21, South Carolina Acts of 1959 (uncodified) 19

Rules:

Federal Rules of Civil Procedure

Rule 50 16
Rule 52 17

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

THOMAS G. BECKHAM, Petitioner

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner Thomas G. Beckham respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this preceeding on March 13, 1985.

OPINION BELOW

The decision of the court of appeals is reported at 756 F.2d 1032 and is set out at pages 1a-24a of Appendix A to this petition. There was no opinion of the district court, but portions of the trial record are set out in Appendix D at pages 29a-78a.

JURISDICTION

The judgment of the court of appeals was entered on March 13, 1985. Petitioner's petition for rehearing was denied on April 22, 1985. (Appendix B at 25a). Petitioner's application for an extension of time to file this petition was granted until August 19, 1985. (Appendix C at 27a). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1982).

CONSTITUTIONAL PROVISION, STATUTE, ACT, AND RULE INVOLVED

(Reprinted in Appendix G at 105a).

Seventh Amendment, United States Constitution.

The Federal Civil Rights Act: 42 U.S.C. § 1983 (1982).

Rule 50, Federal Rules of Civil Procedure.

Act No. 21 of the South Carolina General Assembly (1959).

STATEMENT OF THE CASE

Petitioner was a police officer with the police department of Horry County, South Carolina. He was fired without a hearing. For two days following his firing, false newspaper accounts of the affair were published. Petitioner sued under 42 U.S.C. §1983 (1982) for deprivation of his property and liberty interests. Following a trial from November 28 to December 2, 1983, the

jury returned a verdict for him on both counts.

The trial judge refused to set aside the verdict and the Defendants appealed. The Fourth Circuit Court of Appeals independently reviewed the evidence, and reversed the case because it took a view of the evidence that was different from that of the jury.

The Petitioner recognizes that his petition asks the Supreme Court to review a fact-bound case. The present case, however, is only one of a high percentage of cases out of the Fourth Circuit in which that court of appeals has stepped in and reversed decisions based on credibility issues resolved by a jury. A brief list of the published decisions evidencing this tendency is included in Appendix H at 107a. This practice of the Fourth Circuit has created an uncertainty and disturbance in federal

litigation in this circuit that goes far beyond the facts of this case.

Many facts in this case are disputed. The presentation that follows is supported by reference to the portions of the trial record in Appendix D.

Plaintiff Beckham joined the Horry County Police Department in July of 1979. (App. D at 29a). He was transferred from the uniformed division to the undercover Narcotics Division on January 2, 1981. (App. D at29a). Up to this time, Beckham had very limited experience in undercover work. (App. D. at 31a). He was assigned to work with Mike Foreman, an officer with eight (8) months' experience in the Narcotics Division. (App. D at 73a). Foreman was his senior officer and supervisor as well as his partner. (App. D at 31a, 73a, 78a).

Soon after Beckham took up his duties as a narcotics officer, he was

assigned to a drug investigation that eventually centered on the Ship's Wheel Seafood House in North Myrtle Beach, South Carolina. (App. D at 31a-37a). The Drug Enforcement Administration had alerted Foreman and Beckham that police officers were involved in the smuggling. (App. D at 37a, 57a). That tip was corroborated to Beckham by a highway patrolman.[2] (App. D at 57a). Foreman and Beckham established a surveillance of the Ship's Wheel, where drugs were stored, according to their information. (App. D at 39a). During the stake-out, Foreman and Beckham learned that the details of their investigation indeed had been

---

[2]Events have shown this information had a basis. See, Informations 85-159 and 85-160 and accompanying plea agreements of and pertaining to Horry County Police Officers W.J. "Pete" Bellamy and Hyson Ellis Bellamy, filed August 1, 1985 in the United States District Court in South Carolina.

revealed to drug dealers by local police officers. (App. D at 39a-40a).

Foreman left the surveillance to obtain a search warrant and Beckham moved to a position in the woods behind the restaurant. (App. D at 40a-41a). Some time later, Foreman returned and called Beckham by radio to a rendezvous. (App. D at 41a). He told Beckham he had seen Jerry High driving a silver van and appearing to leave the Ship's Wheel. (App. D at 42a).

Acting upon the search warrant obtained by Foreman, the officers entered a cooler behind the Ship's Wheel and found about 3,000 pounds of marijuana stored there. (App. D at 42a). Foreman called for assistance from the County Police and from the City of North Myrtle Beach Police. (App. D at 43a). As officers arrived, Foreman began to tell them about the suspected armed drug dealers. (App. D at 44a).

Foreman went on to tell the other officers a van had left the parking lot at a dangerous speed just as he had arrived. (App. D at 44a). He elaborated by stating there had been Cubans "running all over the parking lot." (App. D at 44a).

Although Beckham had not been present at the parking lot when Foreman arrived, he did not accept this part of the story and questioned Foreman. (App. D at 45a). Foreman told Beckham it was an attempt to "smoke these people out" and told Beckham to go along with it. (App. D at 45a). Beckham followed Foreman's orders. (App. D at 46a-47a).

Immediately thereafter, officers found the silver van Foreman had seen and detained those in it, one of whom was Jerry High. (App. D at 49a). Foreman and Beckham rode back to the county jail together. During that ride, Foreman again told Beckham to go

along with Foreman's story. (App. D at 49a-50a).

Once the van was secured at the county jail, Foreman received orders to search it. (App. D at 50a). Beckham just had the door of the van open when Solicitor Dunn intervened and told Beckham to come over to his office and prepare a search warrant for the van. (App. D at 50a-51a). Beckham found Foreman, and they went to Dunn's office. (App. D at 51a).

Foreman told Dunn the story he had told the officers at the Ship's Wheel. (App. D at 51a-52a). Then he took Beckham aside and told him to go along with it. (App. D at 52a) Foreman promised he would straighten it out as soon as they could reach Chief Harris. (App. D at 52a). Beckham, however, refused to confirm Foreman's story (App. D at 52a), although he was convinced Foreman was correct about the involvement of police

officers in the smuggling. (App. D at 52a-53a).

After Foreman told his story to Dunn, Foreman departed and left Beckham to see to the wording of the affidavit. (App. D at 52a). Beckham did not allow the affidavit to contain the incorrect information about the van leaving the parking lot. (App. D at 53a-54a). Instead, Beckham restricted his assertions about the van to the correct information that Foreman saw Jerry High at the Ship's Wheel driving a silver Dodge van. (App. D at 53a-54a).

The next day, Beckham again pressed Foreman on Foreman's plan to smoke out the officers. (App. D at 54a-55a). Foreman suggested they prepare a dummy incident report loaded with facts that would purport to show a very strong case against the smugglers. (App. D at 54a-55a). The official incident report listed only the

information provided by D.E.A. (App. D at 55a-56a).

Foreman planned to leave the dummy incident report on their desk so that anyone prowling in the office who saw it might be frightened into getting out, quitting, or resigning. (App. D at 55a, 74a-75a). They thought also that the smugglers might plea bargain and turn the officers in. (App. D at 58a-59a). By mistake, the dummy incident report became part of the official file in the case. (App. D at 56a-57a).

When the preliminary hearing was called, Foreman told the "loaded" version of the story from the witness stand. (App. D at 59a-60a). At that point, Beckham blew the whistle. He told Captain Fowler that Foreman was lying. (App. D at 60a).

At the time these events were unfolding, Chief Harris was in Washington, D.C. (App. D at 62a). He returned

immediately and questioned Beckham. (App. D at 62a-64a). Also present were Sheriff Brown, Captain Fowler, Jim Dunn and several members of the Police Commission. (App. D at 63a).

During this interrogation, Beckham told Harris that he and Foreman had been trying to smoke out corrupt police officers. (App. D at 65a). At the time of his interrogation, Beckham was upset as he had turned in his partner. (App. D at 66a). Knowing also that much of Foreman's information was untrue, Beckham stated the whole thing was untrue. (App. D at 65a-68a). Following the questioning, Beckham gave a statement. (App. D at 64a-65a). Mike Foreman gave a statement. (App. D at 65a). Shortly after that, Beckham was fired. (App. D at 65a).

Harris and Dunn called a press conference to announce that Beckham had been

fired. (App. D at 75a). The press release distributed to the media stated Beckham had been "an active participant in furnishing false information" to the Police Department. Also, Chief Harris wrote, "I will not tolerate or condone any officer who is less than truthful in the discharge of his responsibilities."

In addition, Harris and Dunn told reporter Bob Bloodworth that Beckham himself had testified falsely at the preliminary hearing. (App. D at 75a-78a).

Beckham's first opportunity to examine the affidavit with counsel convinced him that, although much of Foreman's story was false, his own affidavit was correct. (App. D at 69a). He was acquitted on all the charges brought against him. (App. D at 69a-70a).

Following his acquittal, Beckham made unrelenting efforts to obtain a full

hearing before someone in authority. (App. D at 70a-73a). These applications were made to Chief Harris and County officials. The Horry County Police Commission had been abolished on April 16, 1981; County Council took on its functions, duties, and responsibilities. All his efforts were denied.

REASONS FOR GRANTING THE WRIT

The writ should issue because the decision, though merely wrong, was very wrong indeed. In the Statement of Case, the Petitioner has noted that this is fact-based application. The Petitioner urges, however, that the Supreme Court issue the writ prayed for because the Fourth Circuit too often strays into deciding issues of credibility and reexamining the facts of a case. This practice goes against the pronouncements of the Supreme Court, the stated principles of the Fourth Circuit itself, and

encourages those meritless, fact-based appeals which the fourth circuit and other appellate courts rightly deplore.

This court noted recently that the trial on the merits should be the "main event," not merely a "tryout on the road" to the court of appeals. Anderson v. City of Bessemer City, N.C., ___ U.S. ___, ___, 105 S.Ct. 1504, 1512 (1985) (citing Wainwright v. Sykes, 433 U.S. 72,90, 97 S.Ct. 2497, 2508 (1977). Parties should not be required to spend their time and resources relitigating facts before a three-member jury composed of appellate judges. Anderson, ___ U.S. at ___, 105 S.Ct. at 1512. The Fourth Circuit has recognized that a losing party raising a factual issue must demonstrate that the evidence relied on for the factual finding can be deemed to have no significance. Gilbert v. Scratch 'N Smell, Inc., 756 F.2d 320, 321 (4th Cir.

1985) (Murnaghan, J.). That court has also stated that evidence is to be construed "in a manner most favorable" to the party who prevailed with the fact-finder. Raferty v. Scott, 756 F.2d 335, 337 (4th Cir. 1985) (Murnaghan, J.).

In the present case, however, the Fourth Circuit ignored testimony, invented facts, resolved issues of credibility, and gave no deference to the principles of appellate review it professes. The particular errors of the Fourth Circuit's decision will be set out below. When those errors are put before this Court, it will be seen that the Fourth Circuit's decision invaded the fact-finding process more grievously than the decision reversed in Anderson, supra.

Appellate review of jury verdicts under Rule 50 of the Federal Rules of Civil Procedure is more tightly reigned than review

under Rule 52, which was at issue in Anderson. United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct., 525,542 (1948). Case v. Morrisette, 475 F.2d 1300, 1306 (D.C. Cir. 1973). Facts decided by a jury may be reviewed only as to the sufficiency of the evidence. United States Constitution, Amendment VII. It is these limitations which the Fourth Circuit did not observe in its review of the present case. The wider harm invited by the Fourth Circuit's decision will be addressed in a moment; for the present this discussion turns to the decision of the Fourth Circuit in this case and the particular errors found there.

The incorrectness of this decision stands on two pillars: As to the property interest, Petitioner had none according to the Fourth Circuit. As to the liberty interest, Petitioner was his own accuser. The Fourth Circuit could not have reached

these paired conclusions without retrying the case from the appellate bench.

The Court of Appeals first that Petitioner had waived any right he might have had to a hearing. (App. A. at 17a-18a). The court's opinion does not take note of the substantial evidence supporting a non-waiver. (App. F. at 87a-93a).[3] The trial judge addressed the point in the post-trial motion hearing. (App. E at 82a-84a). Nor does the opinion recognize that this factual issue must be held to have been decided in Petitioner's favor. Thus the court of appeals ruled that Petitioner slept on his rights. (App. A at 18a).

Petitioner's employment was conditioned by a clause that a policeman

---

3--Appendix F contains portions of the Petitioner's brief to the court of appeals. The excerpts reproduced there give citations to the appellate record, which is not at present before this court.

shall be allowed a hearing before termination. (Act No. 21, App. G at 106a). The trial judge instructed the jury that Petitioner was entitled to an opportunity for a pretermination hearing. It was a jury issue whether he was permitted such a hearing. Cleveland Board of Education v. Loudermill, __, U.S. __,105 S.Ct. 1487(1985) is not dissimilar in its concern for the role of due process in preventing erroneous decisions and for overly restrictive grants of property interests.

Further, on the property interest, the court of appeals ignored Petitioner's testimony that his employment with the police department was terminable only for cause. (App. D at 30a). Both Petitioner and the department understood that he could be fired only for cause. The fourth circuit's version of this testimony is that Petitioner testified it was "his understanding" that

he could be fired only for cause. (App. A at 13a, n. 7). Petitioner's actual testimony, however was that both he and the department understood that once he became a permanent employee, he would be fired only for cause. (App. D at 30a). The fourth circuit's treatment of this evidence is a subtle but devastating example of the errors that pervade the opinion.

In the same footnote referred to in the preceeding paragraph, the court of appeals states:

> Petitioner also asserts that the disciplinary guidelines found in the personnel manual create an expectation that an employee cannot be discharged except for violation of certain specified conduct. This evidence, however, does not establish that a property interest was created in Petitioner's continued employment with the police department. Moreover, the very guidelines to which Petitioner points mandate his immediate discharge,

> i.e., "Group C - First Violation may result in discharge: 1. Falsification of records or misrepresentation of material information."

The first point that is apparent is that the guidelines do not mandate dismissal at all. An officer "may" be dismissed. Further, there is nothing in the guidelines stating the dismissal must be "immediate." The mandated immediate dismissal was read into the case by the court of appeals. The court of appeals ignored the unobjected-to jury instructions which cast the policies and guidelines in the role of evidence the jury could use to find a property interest. (App. F, at 101a-103a). The court of appeals stated merely that this evidence did not establish a property interest; but that was a decision for the jury to make upon the evidence and the instructions.

The trial judge also charged the jury on the significance of the language in Act No. 21 (App. G at 106a) which states that an officer shall be allowed a hearing before termination. He defined "allow" for the jury and submitted to it the question whether Petitioner had been given the protection the Act called for. (App. F at 89a-90a). The jury's verdict shows a decision favorable to Petitioner on this factual point. The Fourth Circuit made no mention that this issue was specifically charged to the jury but merely stated it was "unpersuaded" the Act gave Petitioner a property interest. (App. A at 13a-14a).

The point should not be labored: The court of appeals simply picked the evidence it wished to rely on and either ignored or disbelieved other evidence.

Petitioner's claim of a violated liberty interest rested on his contention

that officials had falsely told the press that Petitioner had testified falsely at the preliminary hearing. The evidence supporting this claim was given from the stand by the reporter who wrote the newspaper stories. (App. D at 75a-78a). The court of appeals branded this testimony "no persuasive showing." (App. A. at 20a, n.12;24a).

In the course of its recitation of the evidence in the case, the court of appeals commits a factual error that is most telling. The court states that Petitioner attested in an affidavit to the "fictitious story that Jerry High had been seen at the Ship's Wheel Restaurant on the morning of January 21, 1983." (App. A at 7a). This statement completely distorts the record. The affidavit was not false and neither was that portion of Foreman's story. So testified the Petitioner. (App. D at 42a,

52a-54a). He had been very careful to insert into the affidavit only those facts known to him or relayed from a reliable informant. Petitioner made this point emphatically on the witness stand. (App. D. at 52a-54a). For the court of appeals to have missed or wilfully misunderstood this fact shows that no conscientious appellate review took place.

The court of appeals insisted that Petitioner was his own accuser and cited statements made by Petitioner at the time of the internal investigation following his whistle-blowing refusal to testify at the preliminary hearing. (App. A at 22a,n.14). But in order to reach that conclusion the court of appeals had to disbelieve the testimony of the reporter who wrote the stories containing the false reports of Petitioner's having given false testimony at the preliminary hearing. Belief or

disbelief of witnesses betrays an appellate court that has taken up the facts of a case for a full review. By contrast, the trial judge stated that although he might have decided the case differently, the jury had sufficient evidence to decide as it did. (App. E at 79a-81a). The harm thus caused spreads beyond this case because fact-based appeals are then everywhere encouraged. A failure to correct this decision will invite an appeal whenever a losing party thinks the Fourth Circuit might take a different view of the facts.

At the outset of this petition, the claim was made that the Fourth Circuit has been particularly active in recent years in invading the fact-finding process and refusing to restrict its function to the correction of errors of law. In an attempt to give some meat to this contention, Petitioner has collected in Appendix H (107a-

109a) a list of those cases published by the Fourth Circuit in which it appears the Fourth Circuit has undone a jury determination of fact, either by reversal or affirmance of a judgment notwithstanding the verdict by the trial judge. Only published decisions were surveyed, although unpublished decisions, too, may reverse on insufficiency of evidence. See, e.g., Washington v. Telcom, Inc., 82-1237 (June 20, 1985) (4th Cir. unpublished).

Cases appearing in 713 F.2d through the most recent Federal Reporter Advance Sheet (765 F.2d 1123) were examined to determine in which cases the Fourth Circuit was reviewing the sufficiency of the evidence to support a jury verdict. The cases are divided simply into two groups: cases finding a sufficiency of evidence and those finding the evidence insufficient to support a finding of the jury. Petitioner

believes that the rate disclosed there of 11 findings of insufficiency against 15 findings of sufficiency is strongly suggestive that the result in the case now before the court is not an aberration, but is part of a definite tendency in the Four. Circuit to force retrials on appeal. So high a rate of disagreement with jury findings would not occur if the Fourth Circuit were abiding by the principles of Appellate Review.

CONCLUSION

To correct this tendency and the erroneous decision in the present case the Petitioner asks that the writ of certiorari issue to review the judgment and decision of the Fourth Circuit.

Respectfully submitted,

Ronald K. Lawn*
John M. Leiter

P.O. Box 7516
Myrtle Beach, SC 29577
(803) 449-1451

Kenneth A. Richstad
P.O. Box 7727
Columbia, SC 29202
(803) 254-8000

Counsel for Petitioner

August 19, 1985

*Counsel of Record

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Thomas G. Beckham — Appellee

versus

J. Gordon Harris, et. al. — Appellants

OPINION

MURNAGHAN, Circuit Judge:

The present appeal arises from an action brought by Thomas G. Beckham ("Beckham"), a former narcotics detective with the Horry County South Carolina Police Department ("the police department") who was discharged by the defendant, Chief J. Gordon

Harris ("Harris"),[1] on February 28, 1981 after submitting false information in an incident report and in an affidavit used to procure search and arrest warrants. Beckham asserts that he was discharged without a pre-termination hearing in violation of his right to procedural due process secured by

---

[1] Also named as defendants were George O. "Buddy" Fowler, Captain of Detectives, J. D. Flowers, Winfred Gore, A. B. Grainger, Bobby Johnson, Elton Johnson, Horace Jordon, Worth Lee, Delano Sanders, Harold Rogers, Joshua Vaught, Bill Ward, in their official capacities as Horry County Police Commission members; James O. Dunn, Solicitor of the 15th Judicial Circuit, all members of the Horry County Council at the time of Beckham's discharge, John Hatchell, County Administrator and William J. Brown, former County Administrator. Beckham ultimately recovered only against defendants Harris, Jordan, Gore, E. Johnson, B. Johnson, Flowers, Vaught, Lee, Grainger, Ward and Rogers, members of the Horry County Police Commission and James O. Dunn, the County Solicitor. Beckham filed a cross appeal challenging the district court's granting of judgment n.o.v. as to defendant Brown and members of the Horry County Council. We find, however, that judgment n.o.v. was properly granted as to those defendants.

the fourteenth amendment to the United States Constitution.

The case was tried to a jury from November 28, 1983 to December 2, 1983 and on December 8, 1983 judgment was entered awarding Beckham $20,000 in actual and $5,000 in punitive damages for violation of his property interest and $15,000 actual and $10,000 punitive damages for injury to his liberty interest in his continued employment with the police department. The defendants Harris, Dunn and the former Police Commission members made a motion for a directed verdict at the close of plaintiff's case and a post verdict motion for judgment n.o.v. or, in the alternative, for a new trial. Those motions were denied by the district court as to those defendants. Harris, Dunn, and the Police Commission members timely appealed.

I.

Beckham was hired by the police department as a patrolman in July of 1979. Satisfactory execution of his duties was presumably the reason for his promotion and reassignment two years later to the position of detective in the Narcotics Division. In his new assignment Beckham served as an undercover narcotics officer with another detective, Mike Foreman.

The events which ultimately led to Beckham's discharge took place on January 20-21, 1981. Beckham and Foreman were assigned to investigate reports that illegal drugs were being stored at the Ship's Wheel Seafood Restaurant in North Myrtle Beach, South Carolina. They commenced a "stake-out" of the restaurant on the night of January 20, 1981. On the morning of January 21, 1981, after an uneventful night's surveillance, Foreman left the scene to procure a search warrant. Beckham remained

at the scene and stationed himself in a wooded area behind the restaurant. Upon Foreman's return, the officers executed the search warrant and discovered a large amount of marijuana[2] stored in the restaurant's walk-in freezer. The duo requested a back-up and as other officers arrived Foreman began to relate a completely fictitious story. Foreman claimed that, when he returned with the search warrant, he saw a silver van pull into the restaurant's parking lot followed by a black pick-up truck. Foreman claimed he recognized the driver of the van as Jerry High and mentioned that three other subjects, whom he identified only as Cuban nationals, occupied the van as well. The suspects, upon discovery of the officers, supposedly fled the scene at

---

[2]In his affidavit executed subsequent to the seizure, Beckham reported that 50 bales or approximately 3,000 pounds of marijuana were confiscated.

a high rate of speed. Although Beckham was not stationed in the parking lot when the silver van allegedly entered the lot he did not believe his partner's story. Beckham questioned Foreman about his fictitious account and Foreman told him that it was an attempt to "smoke-out" fellow police officers who he believed might be involved in illegal drug smuggling. Foreman told Beckham to go along with the story; Beckham acquiesced.

Later that same day, based upon an informant's tip, police officers were told that three Hispanic men were seen at a local motel and that these persons had participated in the loading or unloading of the marijuana at the Ship's Wheel Restaurant. Upon the officers' arrival at the motel, several individuals of alleged Cuban nationality fled the motel on foot. Later that same day, within a five block area of

the motel, Jerry High was observed by police officers in a silver van along with three Hispanic males, all of whom were stopped and taken into custody. The van was transported to the Horry County jail to be searched.

In his affidavit, to be used as a basis for obtaining a warrant to search the seized van, Beckham attested to the fictitious story that Jerry High had been seen at the Ship's Wheel Restaurant on the morning of January 21, 1981.[3] Beckham's affidavit also served as a basis for arrest warrants issued for Jerry High, Bobby Gore and three male Hispanics or Cuban

---

[3]The affidavit stated in pertinent part, that "Officer Mike Foreman did on the morning of Janaury 21, 1981 observe Jerry High at the Ship's Wheel Seafood House driving a silver Dodge van. Upon discovering police officers on the scene, Jerry High fled the area in the said van at a high rate of speed....Less than one hour elapsed between the time Jerry High was observed fleeing the Ship's Wheel Seafood House and the time his vehicle was stopped along with (3) three other occupants of the said van..."

nationality.[4] An incident report was also prepared by Beckham and Foreman containing the fictitious information.

A preliminary hearing was held on February 26, 1981 in relation to the arrests of High, Gore and the Cuban nationals. Foreman advised Beckham a few minutes before the hearing that he was going to stick with the fabricated story contained in the affidavit and in the incident report. At this point Beckham refused to present perjured testimony. He advised Captain George "Buddy" Fowler, his supervisor, and James O. Dunn, the county solicitor, that the information contained in the affidavit and incident report was false. He also admitted destroying a statement by another police officer which made reference to a set

---

[4]All drug charges were subsequently dismissed against High, Gore and the three Cuban nationals.

of keys found at the county jail. Beckham did not testify at the preliminary hearing. On February 28, 1981 Beckham was discharged from the Horry County Police Department for furnishing false information. Foreman was discharged for testifying falsely at the preliminary hearing. Beckham did not request a hearing to challenge the charges against him. On March 12, 1981, Beckham was indicted by the State of South Carolina on charges of false swearing, conspiracy and obstruction of justice. He was later tried and acquitted of those charges.

Dunn and Chief of Police Harris called a press conference after the terminations. A press release was issued on February 28, 1981 announcing that both Beckham and Foreman had been discharged and several articles subsequently appeared in a local newspaper detailing the circumstances surrounding the officers' discharge and the

dismissal of drug charges against the five previously arrested men.

II.

A.

Harris initially contends that detective Beckham had no constitutionally protected property interest in his continued employment with the police department. Therefore, the department was not constitutionally obligated to provide Beckham with an opportunity to rebut the charges against him prior to his termination from the police force.

In order to be entitled to the procedural safeguards encompassed by the due process clause of the fourteenth amendment (notice and an opportunity to be heard) the complaining party must suffer from deprivation of a liberty or property interest. Board of Regents v. Roth, 408 U.S. 564, 569 (1971). "To have a property

interest in a benefit, a person clearly must have more than an abstract need or desire for it... He must have a legitimate claim of entitlement to it." Id. at 577. The sufficiency of such a legitimate claim of entitlement must be decided by reference to state law, Bishop v. Wood, 426 U.S. 341, 344 (1976) as evidenced by state statutes, local ordinances, rules or mutually explicit understandings that support the claim. Perry v. Sinderman, 408 U.S. 593, 601 (1972). Only when such a property interest exists does a constitutional right to a hearing attach. Roth, supra, 408 U.S. at 577. Our present inquiry, therefore, must be whether any South Carolina authority supports Beckham's claim that he has a property interest in his continued employment with the police department.

By Act of 1959, 1959 S.C. Acts & Joint Resolutions 18 ("1959 Act"), the

General Assembly of the State of South Carolina created the Horry County Police Commission.[5] Section two[6] describes the powers and duties of the commission, police chief and policemen. It also provides that county policemen serve "at the pleasure of the commission." On March 7, 1977, the Horry County Police Commission adopted the "Horry County Police Department Personnel Policies" ("personnel manual"), a manual governing the rules of conduct for county policemen. The manual, in its introduction, contains language identical to that employed in

---

[5]The Horry County Police Commission was subsequently abolished by county ordinance on April 16, 1981.

[6]SECTION 2. Powers and duties of commission--duties of chief and police, including the chief, shall be at the pleasure of the commission and the commission shall have the exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the commission pending such hearing...

section 2 of the 1959 Act. Beckham asserts that the 1959 Act and the personnel manual establish that an employee may only be terminated "for cause" and therefore that a property interest exists in his continued employment.[7] Moreover, he contends that the explicit language of the 1959 Act and personnel manual requires a pre-termination hearing. We are unpersuaded, however, that either document establishes a property interest in Beckham's employment with the

---

[7]At trial Beckham testified that it was his understanding that he could only be fired "for cause" once he attained permanent employee status. He also asserts that the disciplinary guidelines found in the personnel manual create an expectation that an employee cannot be discharged except for violation of certain specified conduct. This evidence, however, does not establish that a property interest was created in Beckham's continued employment with the police department. Moreover, the very guidelines to which Beckham points mandate his immediate discharge, i.e., "Group C -First Violation may result in discharge: 1. Falsification of records or misrepresentation of material information."

police department or mandates a pre-termination hearing in an instance where none is requested.

The 1959 Act and personnel manual both clearly state that terms of employment are "at the pleasure of the commission."[8] We have previously construed identical language to mean that an employee who serves without an employment contract is at the will of the employer and subsequently has no tenure and therefore no property interest in his employment, Patterson v. Ramsey, 552 F.2d 117, 118 (4th Cir. 1977), unless the discharge is in violation of procedural rules adopted by the employer specifically

---

[8]While the personnel manual and the 1959 Act go on to state that an employee "shall" be allowed a hearing, the mere use of the word "shall" does not change the essential character of the employment relationship into something other than one at will. "Shall be allowed a hearing" is not the same as "shall be heard, whether or not a requestfor a hearing has been made."

designed to protect employees from immediate discharge. Prince v. Bridges, 537 F.2d 1269, 1272 (4th Cir. 1976). Such procedural rules for employee discharge can be found in the "State of South Carolina, County of Horry Employee's Personnel Policies" ("Employee's

Personnel Policies manual"),[9] although Beckham suggests in his amended complaint

---

[9]The Employee's Personnel Policies manual is a plan adopted in accordance with §8-17-120 of the County and Municipal Employees Grievance Procedure Act ("the Act"). S.C. Code §8-17-110 (1976), a state statute which sets forth "a uniform procedure to resolve grievances of county and municipal employees arising from their public employment." §8-17-110. On August 10, 1976, the Horry County Board of Commissioners approved the Employee's Personnel Policies Manual "for Horry County employees," which presumably would include Horry County police officers. Several letters by Chief Harris and other county officials presented in the record before us find the Employee's Personnel Policies Manual applicable to police officers. If perchance Horry County "procedural safeguards" do not apply to police officers, such as Beckham, then as an employee serving at the will of the police commission, without a property interest in his continued employment, Beckham was not constitutionally entitled to a pre-termination due process hearing. Assuming its applicability, the grievance procedure section of the manual enumerates a three-step procedure to be followed by an aggrieved employee who cannot resolve his grievance through informal arbitration and seeks a hearing before the Horry County Grievance Committee.

In Bunting v. City of Columbia, 639 F.2d 1090 (4th Cir. 1981), we held that a police officer who serves at the will of the City of Columbia has no property or liberty

that the manual may not apply to police officers. Beckham, however, failed to request a pre-termination hearing within the prescribed thirty day period; he waited until May 18, 1981, over two months after his

---

interest in his continued employment. The employee was nonetheless entitled to a grievance hearing under the County and Municipal Employees Grievance Procedure Act. In that case, however, the City of Columbia's personnel policy manual did not conform substantially to the Act, as requried by S.C. Code §8-17-120, and policemen who filed a cognizable grievance under the department's personnel manual had to be employed by the police department for a longer period of time before being able to file a grievance than was required by the Act. No such disparity arises with the Employee's Personnel Policies manual. Nor does the Act limit the police department's ability to discharge an at-will employee. Rhodes v. Smith, 273 S.C. 13, 15, 254 S.E.2d 49, 50 (1979) (South Carolina statute allowing sheriff to dismiss deputy sheriff at his pleasure unaffected by County and Municipal Employee's Grievance Procedure Act, S.C. Code §8-17-110 (1976)).

discharge, before requesting a hearing.[10] The Employee's Personnel Policies manual provides for a pre-termination hearing to those aggrieved employees who request one. The police department is not required, either by constitutional or statutory mandate, to provide a hearing to one who sleeps on his rights. Since no state constitutional,[11]

---

[10]The Employee's Personnel Policies Manual provides in Article IV ("Procedure"), Step I that "he may notify his department head, within 30 working days of learning of the grievable action, that he wishes to present a formal grievance. The department head, without delay, shall scheduled a hearing with the employee..."

[11]Article I§22 of the South Carolina State Constitution provides:

> No person shall be finally bound by a judicial or a quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; ...nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

Such provision, however, does not create a protectable property right, but merely protects one already in existence. Bunting v. City of Columbia, 639 F.2d 1090, 1094 (4th Cir. 1981).

statutory or contractual basis exists supporting Beckham's property interest claim we must conclude that no such expectation arises.

B.

Appellant next argues that Beckham had no constitutionally protected liberty interest in his employment because Beckham acted as his own accuser, thereby negating the need for a due process hearing. We agree.

There is little doubt that a constitutionally recognized liberty interest is implicated and the right to procedural due process required when government action threatens an employee's good name, reputation, honor or integrity. Roth, supra, 408 U.S. at 573. Moreover, governmental dismissal may abridge liberty if an employee is foreclosed from taking advantage of future employment opportunities. Id. at 574. In such a case,

due process requires that the aggrieved individual be afforded a hearing to clear his good name. Beckham finds an infringement upon a protected liberty interest arising from the publicity surrounding his termination. He asserts that false information was spread by the defendants severely damaging his reputation and good name.[12] The truth or falsity of Beckham's claim, however, has little import in an action alleging infringement of a constitutionally protected liberty

---

[12]As previously stated, a press conference was held by Chief Harris and Solicitor Dunn after Beckham and Foreman were discharged. A press release issued by Chief Harris on February 28, 1981 stated that "Foreman testified falsely at a preliminary hearing and Detective Beckham was an active participant in furnishing false information to this department." A newspaper article appearing in a local newspaper, however, erroneously claimed that both Beckham and Foreman presented perjured testimony at the preliminary hearing. There has been no persuasive showing that the error of the newspaper was in any way chargeable to Harris or the other defendants.

interest. Bishop v. Wood, supra, 426 U.S. at 349. Such an assertion is more properly addressed in a state court defamation proceeding.[13] While there may well have been publicity tending to disparage Beckham's character, we have previously held that the need for a pre-termination due process hearing is negated where the discharged employee has admitted his guilt and, in essence, become his own accuser. McNeill v. Butz, 480 F.2d 314, 320 (4th Cir. 1973). An opportunity to confront his accusers or present exculpatory evidence serves no useful purpose when the accused himself has admitted the very acts which compromise his character or impugn his integrity. There exists ample, uncontested support in the record that Beckham admitted

---

[13]In fact, it was revealed during oral argument that Beckham prevailed in a state court libel action against the local newspaper.

falsifying the affidavit and incident report.[14] While twenty-twenty hindsight

---

[14]In a statement on February 28, 1981 to Glen B. Causey of the Horry County Police Department Beckham stated:
Q. Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that mentioned about them being at the restaurant when you went up to the restaurant?
A. In the affidavit it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene.
Q. And that was not ture, is that correct?
A. No sir, it was not true.
Q. Did you sign the affidavit?
A. I signed the affidavit. Mike said he wanted me to go ahead and get the warrants up.
Q. But at the time that you signed the affidavit, did you know that was a false affidavit?
A. Yes, sir, I did.
Q. But you signed it anyhow?
A. Yes, sir, I did.
On March 4, 1981, Beckham was interviewed by Tom Fraser of the South Carolina Law Enforcement Division wherein he stated:
Q. But you did sign all the affidavits and the arrest warrants?
A. I signed all of them.
Q. And the search warrant for the truck?
A. Yes, sir.
Q. But you did this at whose direction?
A. Well, I did it at Mike Foreman's direction because he told me that he had this plan.
Q. And as a result of you signing these warrants, the subjects were placed in the Horry County Jail?

counsels Beckham against engaging in such regrettable conduct in the future, a liberty

---

A. They were already in the Horry County Jail when I signed the warrants.
Q. And since that time, they have been released on bond, is that correct?
A. Yes, sir.
Q. The affidavits that there signed were fabricated?
A. Yes, sir.
At the trial before the Honorable C. Weston Houck on November 28 and December 1 and 2, 1983 Beckham testified:
Q. Did you tell them (referring to Lt. Causey interview) it was false?
A. I did, yes, sir.
Q. And you swore that this was true?
A. yes, sir, I did.
Q. "At the time you signed the affidavit, did you know it was false?"
"Yes, sir, I did."
"But you signed it anyway?"
"Yes, sir, I did."
[reading from transcript of interview]
And you raised your hand to swear it was true?
A. I didn't raise my hand to any of this, but yes, I swore it was true.
Q. Did you have to raise your hand to swear it was true?
A. No, sir, I put my signature on it.
Q. When you put your signature on it, that ment it was true?
A. Yes, sir.
Q. I didn't ask you about Judge Johnson. I asked you is that statement a lie?
A. No, sir, it's not a lie. It was overlooked.
Q. Well, is it true? It was put in there.

interest protectable by the due process clause of the fourteenth amendment does not arise in this case where Beckham by his own words and deeds admitted misconduct. A hearing, had it been granted, would only have confirmed the accuracy of the press release. That a newspaper got things wrong in a manner injurious to Beckham creates no cause of action against the defendants when, as here, no persuasive showing has been made that they contributed to the media error.

Accordingly, we reverse, and direct that judgment n.o.v. be entered in favor of Harris, Dunn and the former Police Commission members.

REVERSED.

A. It was intended to be true when it was put in here.
Q. But it's not true?
A. No, sir, it's not.
Q. And you signed your name to it?

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 84-1211

Thomas G. Beckham Appellee,

versus

J. Gordon Harris, etc.,et al, Appellants.

No. 84-1261

Thomas G. Beckham, Appellant,

versus

J. Gordon Harris, etc. et al, Appellees,

and

J. Gordon Harris, etc., et al, Defendants.

Appeals from the United States District Court for the District of South Carolina, At Florence. C. Weston Houck, District Judge.

Upon consideration of the appellee's motion for an extension of time to file his petition for rehearing'

IT IS ORDERED that the motion is granted.

Upon consideration of the appellee's petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Murnaghan for a panel consisting of Judge Hall, Judge Murnaghan and Judge Micheal, U.S.D.J., sitting by designation.

[Filed April 22, 1985] For the Court.

John M. Greachen

CLERK

APPENDIX C

Supreme Court of the United States

No. A-14

Thomas G. Beckham

v.

J. Gordon Harris, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 19, 1985.

/s/ Warren E. Burger

Warren E. Burger
The Chief Justice

Dated this 9th
day of July, 1985

APPENDIX D

EXCERPTS OF TRIAL COURT RECORD

Testimony of Thomas G. Beckham (Petitioner)

Q How long were you with the Myrtle Beach Police Department the second time?

A Until July of 1979, at which time I assumed a position with the Horry County Police Department.

***

Q What position did you take with the Horry County Police Department?

A When I first went with Horry County Police Department I went as a uniformed patrol officer, and at a later date I went into the Narcotics Division.

Q How long were you a uniformed patrol officer?

A From July of '79 until January 2, 1981

***

Q Before we go on, let me ask you this: When you went into the Narcotics Division, what was your status with the Horry County Police Department?

A I had served a six months probationary period, and I was now on a permanent status with them.

Q What does it mean, what did it mean to be on permanent status with the police department?

A Well, at any time after you have -- well, during your probationary period, if they didn't like the work I was doing, didn't like my attitude or just whatever they didn't like about me, or if I didn't like my job or their attitude, I could be terminated or I could leave, and there would be no questions asked. Anytime after that I was a permanent position there, and I would have to be -- have due cause to have been fired or should give notice if I left.

Q You said when you went with the Narcotics Division, Mike Foreman was working there. What was your relationship with Mike Foreman at that time?

A Well, he was the senior officer there, but he was my partner.

***

Q How much experience, prior to this time, did you have in undercover work?

A Very little. I had been called upon on occasion to assist for a day or two here and there. Nothing of any extent.

Q Do you recall your investigation of the Ship's Wheel Restaurant in Little River, South Carolina?

A Yes, sir, I do.

Q How did the investigation begin?

A Well, the investigation of the Ship's Wheel itself stemmed from an ongoing investigation we already had going, that began about the 10th of January.

Q What investigation was that? What was happening at that time?

A Detective Foreman had received information from a confidential and reliable informant that a load of marijuana --- My partner had received this information and passed it on to me. The information was that there was a load of marijuana going to come in to Myrtle Beach, inside the city limits of Myrtle Beach, to a house on approximately 46th avenue north, sometime around the night of the 15th of January. The information also was that it was to be taken from there to a house in Socastee and stored, and along with this information, the information was received that there was also a possibility of police officers involved, two with the city of Myrtle Beach, and either two with the county and one with the Highway Patrol or three people with the county. In other words, there was five police officers

supposed to have been involved in the situation.

Q As a result of this information, what then did you do?

A We began checking out the area on 46th avenue --I say we, I mean Mike Foreman and myself. We began checking out the area on 46th avenue. It was a house on the beach, which was under repair by a construction company, and also checking, trying to locate the house at Socastee that this same construction company owned.

Q How did you go about watching this house, checking out this house?

A I had borrowed a pair of night vision binoculars from the National Guard in Myrtle Beach, and I would sit in the Sand Dune areas and observe the house, and then ride by during the day and take pictures of the house and all the tags on the cars sitting in the yard, at which point in time detective

Foreman got sick with a flu bug or something, and I had it all to myself.

Q What happened then?

A On the morning of the 15th of January, I was given a call by U.S. Customs, and they were advising they had information of a load of marijuana was going to come in, not into Myrtle Beach but into Little River, and that the boat that was involved in it was a boat that belonged to Jerry High, and at this time they advised me they would meet me in North Myrtle Beach. I went to the North Myrtle Beach Police Department, got in touch with the detective there that had formerly worked with the county police, and had informed him of the situation I had, and also got with Johnny Causey, who is the chief of North Myrtle Beach Police Department.

Q What then occurred?

A We set up surveillance in the Cherry Grove area of North Myrtle Beach, and

also on the road going out to Little River neck, and the drug enforcement administration met us up there and set up surveillance on the North Carolina side of the Little River inlet area.

Q As a result of your surveillance, what happened?

A Well, I was trying to keep watch on this house in Mrytle Beach, also, so I was running back and forth, but at one point in time a North Myrtle Beach officer called us to his vantage point, which was on the Cherry Grove inlet, and Chief Causey and I went to that area and looked through night vision binoculars and observed a boat approximately a quarter of a mile offshore coming towards the beach. The boat got into between a quarter and tenth of a mile offshore and stopped, waited several minutes, turned around and went back out in the ocean.

Q Do you know why it did that?

A I don't have any knowledge of why it did. It just appeared that maybe it had been warned or signaled, but they went back out to sea. They didn't come back in.

Q What happened after that?

A After a vain attempt to locate the boat, I went back to Myrtle Beach to check the area on 46th avenue and found while I was gone a load of marijuana had been loaded off.

Q After you discovered that, what then did you do?

A I began checking the houses in the Socastee area trying to find out where it was moved to, and when I was unable to locate the exact house or even when I did locate a house I thought it was the one they were talking about, there was no way we could tell what was inside of it or anything. So I started checking some of the other landings

and all, trying to find where the other boat might have come in.

Q What happened as a result of those checks?

A They were in vain. I spent about three nights in my car, just living out of my car on vienna sausage and crackers.

Q What happened next?

A The morning of the 20th, I went home and got in bed. I was exhausted, and sometime on the afternoon of the 20th, probably two or three hours after I had been in the bed, Detective Foreman called with information he had received from the drug enforcement administration about the Ship's Wheel.

Q Did he tell you what that information was?

A Not at that time. He wanted me to meet him at the jail. We were going to the Ship's Wheel Restaurant.

Q Did you meet him at the jail?

A I met him, and on the way to the Ship's Wheel he relayed the information from the drug enforcement administration, and this was the fact that there was to be, originally set it for a hundred bales of marijuana, but then it turned out to be 50 bales of marijuana was to be put in the cooler at the Ship's Wheel Restaurant. There was another load of marijuana that was going to come in that night, to be joined with the first load, and then Jerry High and some Cubans were going to take the marijuana from the Ship's Wheel Restaurant to somewhere over in the Calabash or Little River area. It was relayed that there was -- out of the Cubans involved, that one of these Cubans was to be armed, and he was going to be guarding the marijuana, and there was a possibility that he was involved in two drug-related murders in the Miami area.

Q As a result of this information, what did you do then?

A We contacted -- I say we, Mike Foreman and I contacted Captain Fowler and some of the other members of the Horry County Police Department, which met us in Calabash, North Carolina, and passed the information onto them, and from there, a stake-out was set up on the Ship's Wheel area. I don't know where Captain Fowler and them were set up, but Detective Foreman was set up in the parking lot of the welcome center watching the front of the building, and I was set up in the woods behind the restaurant watching the rear of the Ship's Wheel Restaurant.

***

Q What were you told by this gentleman by the name of Buzzard?

A He was relating back the fact, again, that we had painted our car. He had recognized the car. He said, "Everybody up

here knows that car and know your tag." He said, "We know what y'all are waiting on. We know you're waiting on that load of marijuana coming in." Which kind of floored me. There wasn't anybody supposed to know it except for us, the county people and the D.E.A. He said, "It's not coming in here. It's been rerouted into Calabash." He said, "There's police officers up here that tell me what's going on." He said, "They know y'all are here."

After a few more minutes of conversing with Mike, he got in his car and drove off.

Q After that, what happened?

A Well, I was kind of frustrated over the situation. I told Mike, "Look, why don't you, with the information you have from your informant, and your information from the drug enforcement administration, plus what we observed with the coolers, let's

get a search warrant and search the thing, and if there's marijuana, we'll get it and if not, let's get out of here."

So, Foreman went to get the search warrant and I went back into the woods.

Q What happened while you were in the woods?

A Well, I don't know how long Mike was gone, but I was cold, like I said, and it was still raining, so I tried to find a dry vantage point, and I found an old chicken coop so I laid in the chicken coop and waited for Mike to get back.

At some point later he called on the radio and I told him to meet me at the corner, which was at the Ship's Wheel -- not the Ship's Wheel, excuse me, the welcome area where he had been sitting and surveilling from. I met him over there. I had to go through the woods, and when I got

there, he says, "Did you see Jerry High? I said, "No, I hadn't seen anybody."

He said, "I just saw him, and somebody in the van with him, looked like a Cuban." I said, "Well, I hadn't seen anybody,"

***

Q What did you do once you had the search warrant?

A We went over to the restaurant, drove through kind of casually, to make sure this fellow, this guard, wasn't out there, and I saw the back -- sawed the lock off the rear cooler and opened it up and there was more marijuana there than I had seen before, in a while.

Q Do you recall how much marijuana was there?

A I think it was 3,000 pounds, turned out to be 31 [sic] bales.

Q Once the marijuana was discovered, what did y'all do?

A I looked over at Mike, and I think my words were out of my mouth, "Bingo." And Mike kind of started glancing around like he was looking to see, you know, like it scared him, too. He was looking around to see what he could see, and he said, "Well, we better get some help here. These people are liable to come back." So I agreed with that. I was scared about this Cuban fellow that was supposed to be there.

So, he got on the radio and he called for assistance and couldn't get the county, so he called the North Myrtle Beach Police Department. They relayed the information and they also responded.

Q After the call went out, what happened next?

A Probably within three or four minutes, maybe a little longer than that,

we started hearing the sirens coming up the road, and two North Myrtle Beach units arrived. One was a detective car and one was a marked unit, and when they pulled in they were getting out of the car wanting to know what was going on, and Detective Foreman says, "We have a lot of marijuana here and we're scared they're going to come back and get it. We need to spread out and be on the lookout there's supposed to be some armed Cubans here," which anything he said up to now didn't bother me.

Within a few minutes, though, other police officers were starting to arrive, and Mike said, "I went to pull into the parking lot, and here's a van going out of there at a high rate of speed, and just about turned over, and Cubans running all over the parking lot."

Q Who said that?

A Detective Foreman. This upset me. I said, "Mike, what are you talking about?" And I hadn't seen this and if there had been Cubans in the parking lot as dangerous as this one, seems like he would have told me. So, I didn't believe this.

So, I asked him, "Mike, what are you talking about?" He said, "Just go along with me. We're going to have to smoke these people out. They've gotten away from us here, but we're going to catch them in the long run."

I just kind of stood off to the side --

Q What did you tell people?

A I'm not sure exactly who it was that came up to me first, but somebody came us and said, "What's going on," and I said, "Well, we've got some marijuana, and there's been some people in the area and we were worried about them maybe coming back." And

then at another time somebody asked me what was going on, and I told them, "Mike saw some people here and you need to ask Mike who they were because I didn't see them."

Q After that, what then occurred?

A More officers arrived on the scene, and we got the area sealed off. I guess we had about 15 to 20 officers all together, and there was a lot of excitement going on, and Mike was on the back porch telling this story about the people had been running around in the parking lot.

Q At his point, why didn't you tell someone Mike hadn't seen what he was saying?

A I had been back up to Mike again and told him, "Look, Mike, what in the hell are you talking about?" Mike said, "Just go along with me. We'll smoke these people out." He said, "Just trust me. I've never led you astray. I know what I'm doing."

So, at the time I felt, well, he knows what he's talking about. There's not anything that happened so far that was any harm to it, really.

So, he's on the back porch telling about what was going on, and these other officers were saying, "Where did you get your information?" And Mike advised them that the D.E.A. and also another informant had given information about High and the Cubans were supposed to be coming to get that other load of marijuana from there, and that also there was Cubans staying at the Colonial Inn Motel.

I'm not sure what officer it was, but one of the officers said, "I just saw a Cuban at the telephone booth at the Colonial Inn." I believe it was either Captain Fowler or Chief Graham --

Q What happened then?

A --gave out an order to try to locate the Cubans for questioning. So, Detective Hillsberry and myself took a car, Jack Blackwell from the County Police took a car, and one of the North Myrtle Beach Police cars went to the Colonial Inn. Before anybody else got there, Jack Blackwell got there, and he hollers on the radio that a Cuban had run from the phone and was running into the wooded area. He gave the description. The description he gave of the Cuban was the same one that Mike had given of the guy in the van, with the black leather jacket on. As he got in the woods, several of us got out. Detective Beller and myself were looking in the woods trying to find him. After five or ten minutes we couldn't find him so we went back to our car. We left there and went back to the restaurant, and the radio call came and said that they had caught some Cubans on the road going

down to the Little River waterfront. I went back to --

Q Do you know who called them Cubans?

A I believe it was Chief Graham, and Pat Bellamy, the Magistrate, and one of the North Myrtle Beach Police units. So, I went back over to the location where they had this van stopped, a silver van, and there's three individuals in one police car and another individual in another car, and the van has all the doors open and there's luggage scattered all over the ground, and Officer Knowles, I believe it was, walked up to me and handed me a driver's license, and here's the driver's license of Jerry High. It struck a familiar bell.

***

A He asked me, he said, "What did they arrest these people for? What did they go on?" I said, "Mike, I don't really know," and before I finished talking, he said,

"Well, you know no matter, we were still going to have to carry this thing out the way it's going. Because if it's going to work, we have to go with it as it is."

***

Q What was the next thing that happened?

A Mike Foreman came to me and said that Captain Fowler wanted the van searched. He wanted to find out what evidence was in the van. Of course, the evidence in the van had already been scattered all over the road, and at this time I started checking the areas of the van. I was getting ready to open the door. Matter of fact, I already had the door open, and Jim Dunn walked up and said, "If you're going to search the van, let's do it right. Do you normally do it by inventory search?" I said, "No, we haven't been. We've instituted some kind of

procedure, I've seen some kind of paperwork on it."

Q Who is Jim Dunn?

A That's the Solicitor for the 15th Judicial Circuit, which includes Horry County. He said, "No let's don't do it that way. Come over to my office and get a search warrant and do it ight."

Q When he told you this, what then did you do?

A I went and got Mike Foreman and told him what the solicitor had wanted, and we went over to the solicitor's office.

Q What happened at the solicitor's office?

A Well, Mike Foreman, when he got there, he came in and he told this story about seeing the van turned sideways coming out of the parking lot, and these Cubans running around, and then called me over to the side and said, "Look, go along with it.

Everything will be cool. We'll have it all straightened out soon as we get in touch with Chief Harris, before it gets to the courtroom."

So, at this time, he was going to leave, and before he left, Jim says, "Well, what of this did you see?" I said, "I didn't see any of it. I can't identify any of these people." And he says, "Okay." And Detective Foreman says, "I can." So, he went back to the story again. He left me, and I was left there to set everything in chronological events with the solicitor, and we got the affidavit worded up from that.

Q What [sic] didn't you tell the solicitor at that time that you felt like Mike Foreman hadn't seen anyone?

A I felt like the man knew what he was talking about, the information about the police officers being involved and the informant coming to the scene up there and

telling us that police officers were involved, the situation with the boat coming in and acting like they had some kind of signal. It was all lined up like the informant had said. I felt like Mike knew what he was talking about. He kept telling little things here and there and everything just fell right into line, like he knew what he was talking about.

Q Now, you specifically state in the affidavit that Officer Mike Foreman did on the morning of 1-21-81 observe Jerry High at the Ship's Wheel Seafood House. Why did you put that into the affidavit?

A Mike Foreman had told me that morning that he saw Jerry High when he asked me did I see him and I said no, and he said, "Well, I just saw him."

Q Did he say how he saw him, where he was?

A He just said he saw him driving a silver van with this Cuban or a fellow that looked like a Cuban. He didn't say he was a Cuban.

Q Where did he say the van was?

A He said, "Leaving here," and when he said, "Leaving here" I was under the impression he was talking about the Ship's Wheel.

Q Why didn't you put in there that Jerry High was seen leaving the parking lot of the Ship's Wheel Seafood House?

A I didn't feel like what Mike Foreman said about the parking lot was true, and I didn't want it to go in the warrant.

***

A The next step, I met Mike over at the office the next morning, somewhere around 11 or 12 o'clock, and this was when I began to question him on what this plan of smoking these people out was to involve. I was

concerned, because, you know, he hadn't discussed it with me, what we were going to do, how this thing was supposed to work. So that was when the idea of his was to use an incident report, a loaded incident report to allow anybody that came sneaking through our office could find this information, find out just how tight a case we had on these people, and if they got back in touch with the people and the people say, "Well, they don't have a tight case on us," and the officer looked at the incident report and he knew it was a tight case and he thought they were going to turn him in, and they were leading him to believe it wasn't such a good case ---

***

A There was one prepared that was an official incident report. It just listed information provided to us by D.E.A., the fact that 51 bales of marijuana -- at the

time I think it said 50 bales but we had miscounted and we later found out we had more than we thought.

***

Q Explain to the jury what exhibit no. 5 is.

A Well, it's a combination of the two incident reports. The top page was for the one that was supposed to go with the file, and the second page was the one to go on the desk. One was handwritten, another was typed, and evidently they got paged together here.

Q How did that come about, do you know?

A No, sir, I don't know. There was a lot of commotion going on. It could have been done, we were putting the paperwork together back there in the back -- I don't know. I might have stapled them, Mike might

have stapled them together. I don't know.

***

Q Tom, why did you prepare this report when the day before you told Solicitor Dunn you hadn't seen anyone?

A That report was not intended to go to Solicitor Dunn. I'd be a fool to tell him one day I didn't see anything and give him that report the next day. The only reason I went along with it, the information we had been receiving from the informant, information I received personally from the drug enforcement administration, that they thought possibly there had been policemen involved. One of the highway patrolmen up in the North Myrtle Beach area approached me with the same information.

Q What information was that?

A About the possibility of police officers being involved.

Q After the report, the loaded report was prepared, what did you do with it?

A It was put on my desk in the narcotics office.

Q State again what the purpose of the loaded incident report was.

A It was a trap for people who came pilfering through the desk trying to find out what kind of information they could find, how strong our case was.

Q How would this information affect those who would pilfer your desk?

A If an officer ran across that and saw the information that was there and went to one of these other people that he was involved with, and said, "Boy, they got a strong case against you," and the man tells him, "No, they don't have a strong case against me," and then either the police officer starts wondering, "Well, is this guy just telling me this because he's getting

ready to turn me in," and then the criminal himself wants to come in and plea bargain and turn the officers in. It would work in one of those two manners, as it was explained to me, and it sounded logical.

***

Q What happened at the preliminary hearing?

A Well, at the preliminary hearing itself, Mike met me in the hallway, called me off to the side, and said, "Look, this thing is going to have to run longer than we thought. We're going to have to let it go through the preliminary." I said, "No way. You're talking about perjury, Mike. I can't get up there and lie." I said, "Spread rumors and stuff like that, that's fine, but I cannot lie under oath on the witness stand."

Q What happened then?

A Well, they were getting ready to call the preliminary, so he called me into the little room where the coffee room is and he said, "Look, we're going to have to testify the same or we're going to have the case go down the drain, whatever we got that's good or bad."

I said, "Mike, the hell with it. I don't care. I'm not going to perjure myself."

Q What happened at the preliminary hearing?

A He took the stand and he perjured himself.

Q What did you do then?

A I turned to Captain Fowler, we were sitting in a little jury box like this one here, and he was sitting behind me, and I turned in the chair and I said, "Buddy, I need to talk to somebody. Mike's lying." I said, "I never called on the radio. I

never called anybody on the radio. I never saw anybody up there. He knows that and I told Jim Dunn that."

***

Q After that, what did you then do.

A I went back to Captain Fowler and told him the whole circumstances about the fact that Mike had perjured himself, that it needed to be straightened out. I was having trouble with my conscience at that time because he was my partner. I had been trusting the man and yet here I was going to have to turn him in. That was something that police officers just don't ever do, and I was to turn my partner in.

Q After you told Captain Fowler this, what happened next?

A We went to Solicitor Dunn's office and told him the same situation.

Q What happened when you were discussing the matter with Solicitor Dunn?

A Just went over the same thing I'd gone over with Captain Fowler about it, and he said, "Well, let's wait for Chief Harris to get back from Washington to handle the situation."

Q After your discussion with Solicitor Dunn and Captain Fowler, what happened next?

A I was told just to go on back to the house, to my home and wait until Saturday morning, and be back in there that morning. I think we met at 8 o'clock at the jail that morning.

Q What day was it that you met with Solicitor Dunn before you were told to come back?

A Thursday.

Q So, you were told to come back Saturday?

A Yes, sir.

Q Who was there when you went back?

A The Chief was there. Sheriff Brown was there. Several of the commissioners, I believe, including Mr. Flowers, I think, in and out. I'm not sure whether at the time Horace Jordan, Delano Sanders, Jim Dunn, various members of the police department and the police commission.

Q When you got there, what happened?

A Chief Harris, Jim Dunn and Captain Fowler went into the Chief's office a couple of moments and talked, and then they called me in. I was brought into the room.

Q When you were taken in, what was said to you and what did you say?

A Chief Harris said that there were some problems he had heard about, and he thought we needed to talk about them. I agreed that we did need to talk about them, and he read me my Mirandas.

Q Explain what a Miranda is.

A It's a warning that you have the right to remain silent, that you can -- anything you say can and will be used against you in a court of law, just explains the various rights that you don't have to tell anything to the man.

Q After you were given your Mirandas, what happened next?

A I told the Chief that Mike had perjured himself on the stand, and he asked me various questions, and I answered his questions, and this went on for about 45 minutes to an hour.

***

Q Tell the jury who Buddy Causey is.

A He's the internal affairs officer for the policy department, a lieutenant in the Detective Division. I went into -- I don't know what they call the room, Chief Graham's office, and they set up the dictaphone, and I gave Buddy Causey a

statement. Within 20 or 30 minutes after Mike Foreman had gone in and given his statement, I was called in to the Chief's office and I was told that I was terminated.

***

Q Briefly describe what went on prior to your having talked to Detective Causey.

A I had been in the Chief's office and discussed with him the fact that Mike had perjured himself on the stand, and the fact that we had been trying to smoke out the police officers that were involved in it, and that the thing had just gone so far that I just felt like lying was just not a part of it, not lying on the witness stand. I could go along with reports and stuff like that, as long as it was not something that was going to be a courtroom type document. But I was not going to go up there and lie on the witness stand. The solicitor himself

was the one who was talking about the courtroom documents, even though I didn't feel like I had lied about it, in fact, because I knew the information that Foreman had given me was false, so the affidavit I gave was false.

Q What did you say to that?

A I'll tell you, there was just so much going on in the way I felt over the situation, I was just crushed about the thing about my partner. Like I said a while ago, it didn't make any difference to me at that time. The whole thing was turning into a ...

***

Q Referring to the page before that, Mr. Beckham, page 4, the tape we just heard, and in the written statement it says, "Question: Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that mentioned about them

being at the restaurant when you went up to the restaurant?"

It says, "In the affidavit, it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene."

Then Detective Causey asked you if that was true, and you say, "No, sir, it was not true."

He asked you if you signed the affidavit and you said you signed it, yes, and he asked you, "But at the time that you signed the affidavit, did you know that was a false affidavit?" Your answer was, "Yes, sir, I did."

He asked you, "But you signed it anyhow?

The answer is, "Yes, sir, I did."

Tom, why did you say that?

A Well, actually two thing come into this. One was the fact that I was told that

if anything that was said to obtain the affidavit was false, then the affidavit was false.

Q Who told you this?

A That was during all this questioning that morning on the 28th. But this particular statement that morning right here, a lot that had to do with that was that I didn't know at that time what Mike was telling me was true and what he was telling me was a lie. And at that time, I didn't really care. I just felt like the whole thing was a lie. And that had a lot to do with this particular statement.

***

Q What was the next thing that happened after you gave you a statement to Lieutenant Frazier?

A An indictment.

Q What indictment was that?

A I was indicted on conspiracy, obstruction of justice, false swearing.

Q When did you discover that the statements you made and the affidavit were incorrect?

A About three days after the indictment. I was in my attorney's office and he asked me to go through the affidavit and I showed him what I was talking about was incorrect in my statement, and that there was just nothing in the affidavit that was incorrect.

Q During what period of time after you had given the statements did you find out that the affidavits were incorrect? Do you recall when that was?

A Three or four days after the indictment. I don't know how long a period of time it was, Mr. Leiter. A week or so.

Q What happened at the trial, at the criminal trial?

A I was indicted -- excuse me, I was acquitted. I don't know what else you might be referring to.

***

Q After you were acquitted, what efforts did you make to get your job back?

A The trial ended on a Saturday, and that following Monday morning I was in Chief's Harris' office wanting my job back.

Q What were you told by Chief Harris at that time?

A Chief Harris said he didn't have the authority to give me my job back and I had to go to Bill Brown. I went to Bill Brown, who was the county administrator, and he told me I would have to start filing grievance procedures before I could get my job back.

Q What did you do then?

A I already informed Chief Harris I wanted to have grievance proceedings, so I

wrote him a letter advising him the same thing.

Q After you had written a letter, what happened then?

A I got a letter back referring that he would have to refer to the county attorney who was out of town. I got a second letter stating that I didn't comply with some -- I forgot what the title was, but a time limit, and therefore I was disallowed a hearing.

Q Let me show you these letters and ask you if they are the letters you sent and received?

A There's one missing, the one I sent to county council.

Q I'm going to ask you if you can identify what has been marked plaintiff's exhibit 23 for identification?

A Yes, sir.

Q What is plaintiff's exhibit 23?

A Plaintiff's 23 itself is a letter I sent to the chairman of the county grievance committee, and also a letter to the chairman of the Horry County Council.

Q Is that your signature on the second page?

A Yes, sir, it is.

Mr. Leiter: I'd like to introduce plaintiff's exhibit 23 into evidence at this time.

Mr. Henry: No objection.

The court: Let the clerk mark it.

(Plaintiff's Exhibit No. 23 Received in Evidence)

By Mr. Leiter:

Q Now, why weren't you given a hearing at that time, Mr. Beckham?

A I was told I didn't come within the time frame that was required to be able to file a grievance, which I disagreed with,

and that's why I kept writing these other letters.

Q What time frame was that?

A I think it was thirty working days from the time that you learned of an aggrievable action, which I felt was my acquittal. I didn't feel like I could try to send in a grievance if I was under indictment. That would be kind of futile.

Q So, it's your testimony that you submitted a request for a hearing within thirty days after an aggrievable action?

A Within a couple of days.

***

Q Who was your supervisor?

A Mike Foreman.

Q Who had been at the department the longest, you or Mike Foreman?

A In the department? Me. In the narcotics, Mike had, for about eight months.

***

TESTIMONY OF Michael Foreman

Q What did Buzzard say to you?

A He come to tell me that one of Horry County Police Officers had already went and told Jerry High and them that we were already on stake-out, that Officer Beckham and myself were on stake-out and that he'd already went and told them and they weren't coming.

***

Q Why were two incident reports prepared?

A Well, we had, Officer Beckham and myself had prepared one, which was the original, to go into the files, which basically just stated who was arrested and so fort, and what happened. The other one was drawn up and left on the desk and we had intentions of, hoping that the right people would see it and realize that we knew they were involved and hopefully we could do

something with them, make them out or make them either quit, resign, or do something.

Q That was part of the plan to smoke out that police officer?

A Yes, sir.

***

TESTIMONY of Robert Bloodworth (Reporter)

Q When did you first hear that Tom Beckham had been fired from the Horry County Police Department?

A I forget the exact date. It was the date of the news conference that Chief Harris and Solicitor Dunn called. It was either late that moring or early that afternoon.

***

Q Do you recall what was said about Tom Beckham having given false testimony during a preliminary hearing?

A Yes, sir. Well, I don't think he specifically said Tom, I believe he said

that both of them had given false testimony during the preliminary hearing.

Q Well, when you say both of them, who do you mean?

A Tom Beckham and Mike Foreman.

Q Did you have any other conversations with any other officials about Tom Beckham's involvement in the matter?

A Yes, sir. I talked with Chief Harris, of course, and I think I discussed it with some members of the police commission, but I don't remember the exact conversation.

Q You don't remember the exact conversation?

A Not with the police commission, no.

Q How about with Chief Harris?

Yes, sir -- well, he just gave me the background, and essentially the same thing that Chief Harris had said, and that he

didn't have any choice but to take the action that he was taking.

The Court: Who was that?

The Witness: Chief Harris.

By Mr. Leiter:

Q What about Chief Harris having said that?

Mr. Henry: Objection. He's leading.

The Court: I think he is. It's a right critical areas, and I'd like for this witness to testify what he recalls being told about this incident, and I don't believe there's any reason to suggest anything to him.

By Mr. Leiter:

Q What were you told about people who testified at the preliminary hearing?

A Well, I think the general conversation was that Tom and Mike --- What the solicitor had already told me.

By Mr. Leiter:

Q What was that?

A That Mike and Tom had both testified falsely or signed false affidavits or warrants under oath.

***

DEPOSITION of James O. Dunn (Solicitor)

A Between the two of them, Foreman was the supervisor, he was the senior man, if I recall, I know he was, ...

APPENDIX E

Excerpt of the Post-Trial Motions Hearing before District Court Judge C. Weston Houck, February 7, 1984

The Court: As far as your position, Mr. Henry, to the effect that plaintiff was his own accuser, I submitted that issue to the jury. I charged them what I thought was the appropriate law relative to such a defense, and as it applied to the liberty interest claim--and I assume from their verdict that they felt that there was a disagreement between the parties as to what the plaintiff did.

If I were sitting on the jury, I wouldn't have reached that conclusion, but there are facts in the record from which they were justified in reaching that conclusion. I'm inclined to believe, myself, after having heard the case, that when this man was terminated, there really was no

substantial difference in what he contended and what was published. But he says there was, and he says he was out there to try to catch people that were leaking information out of the police department. That really strains my mind, to figure out how that could be the case, but that's what the jury apparently found was the case. I can't say they are not justified in doing that, just because it didn't add up to me. I wouldn't see where his conduct would be such that would catch somebody that was squealing on the police. I mean, if that was his purpose, it just seems incredible to me that he would go about it the way he did, but the jury apparently bought it, and I can't say in doing so they acted on something that was not supported by the record, because I think it was. I don't think he was his own accuser. I don't think I can direct a verdict on that ground. I think there was ample evidence

in the record from which the jury could find, and I think they did find that he had something to say to clear his name; that he had a story to tell, and that he was therefore not his own accuser, because his version was different from what was published.

As to J. Gordon Harris, I think there's ample evidence in the record to support a verdict against him for both actual and punitive damages on both causes of action. He was the administrative arm, so to speak, for the Horry County Police Commission. He carried out their policy. He's the man that conducted the investigation. He's the man that made the initial decision to fire the plaintiff, to not give him a hearing, and he went before the police commission in executive session and told them what his recommendation was, and they followed it and fired him. He had the wherewithall, I think, to give Mr.

Beckham a hearing, as the personnel manual required. He had the wherewithall to give him a liberty interest right to explain his conduct, and he failed on both occasions.

I say give him a hearing. The manual, of course, says the terms of all personnel shall be at the pleasure of the said commission, and they shall have exclusive power to remove any county policeman or other personnel therein, but first such employee shall be allowed a hearing before the commission prior to his removal.

Of course, the question is whether or not his man was allowed a hearing, and I submitted that to the jury. I tried to tell them what the law was so they could make a determination, and I think the verdict indicates clearly that they found that Mr. Beckham was not allowed a hearing before the

commission prior to his removal, as the manual required.

As far as the liberty interest, as far as the property interest, I think Mr. Harris--there's sufficient evidence in the record to support the verdict against him on both of those counts. I think the same goes for the police commission.

Basically, everything Mr. Harris does, the police commission does, because he's acting for them. He's acting through the authority that they give him. They have the right--I don't have the statute right before me, but the statute setting them up is--they have the supreme right to run the county police department. His testimony was that they appointed him to do some things. He does the hiring. I believe they send some names to him and he looks at them and then he takes two or three names and gives them to the police commission, and they reach

a decision, and they follow his recommendations, and obviously, the proof is in the pudding, they followed his recommendation to the letter when he recommended that the plaintiff be dismissed after the investigation that he performed.

Now, the circumstances indicate that if at that time he had offered the plaintiff a hearing, the plaintiff probably wouldn't have accepted it, but I think the jury found otherwise. I think they found he wasn't allowed a hearing, and I think there's evidence in the record to support that.

The evidence is clear, I think, that the police commissioners at that time--that there's sufficient evidence in the record to support the verdict against them as to the property interest claim, and as to the liberty interest claim.

The only thing submitted to the jury on Mr. Dunn was the liberty interest claim. I recognize the fact that he didn't have the right to fire the plaintiff. He had nothing to do with that, being the solicitor, rather than being involved in the Horry County Police Department, but he chose to make certain statements, at a press conference called by him for that purpose. I think the testimony of the reporter was that he called him, they had a very close personal relationship, he called him at home, told him he had something important, to come over. He went over there and he had a press conference, and he released this information concerning why the plaintiff was discharged from his job as the Horry County policeman.

Now, he didn't have a right to have a hearing. A hearing would have been of no importance, because Jim Dunn was the solicitor, and he couldn't have a hearing.

But he could have had or could have used his power as a public official to give the plaintiff the right to explain his side, or exonerate himself. That's what the liberty interest is all about. He didn't do that. He could have called another press conference and said, "Look, Mr. Beckham wants to tell his side, here he is. Let him tell it."

I think that's what he was required to do, something along those lines. He didn't do it, and I think the evidence in this case supports the finding by the jury that he was liable on the liberty interest claim.

APPENDIX F

Excerpts from Petitioner's Brief of Appellee to the Fourth Circuit

(References to the Appellate record have been retained in the event the record is certified to the Supreme Court).

A. BECKHAM DID NOT WAIVE OR FORFEIT HIS RIGHT TO A PRETERMINATION HEARING.

The Act creating the Horry County Police Commission states that the Commission

> shall have the exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the Commission pending such hearing.

Act 21 of 1959, 1959 S.C. Acts and Joint Resolutions 18.

The personnel policy of the Horry County Police Commission speaks in similar language. The Police Commission

> shall have the exclusive power to remove any policeman or other

> personnel (in the Police Department), but first such employee shall be allowed a hearing before the Commission prior to his removal. However, the employee may be suspended by the Commission pending such hearing. (Plaintiff's Exh. #1; J.A., p. 400).

In this appeal, the Defendants claim the jury verdict for Beckham necessarily signifies that the judge submitted to the jury the specific question whether the provisions just quoted created in the Horry County Police Commission a duty to hold a hearing even without a request from the officer terminated. (Appellant's Brief, pp. 10-11). This point is far from true.

The trial court charged the jury that "to allow" means "to permit." (Tr., Vol.

III, p. 536, lines 19-24). Specifically, he instructed the jury

> Allow should be given by you its plain, ordinary, and usual meaning. That meaning has been defined as being permit. And in this context, I charge you that that is the plain ordinary and usual meaning of allow. Permit. It does not guarantee or ensure a hearing prior to termination. It means to permit, to allow a hearing prior to termination.
>
> It means simply, as I just said, to permit the Plaintiff an opportunity to have a hearing before the Commission prior to its termination, ...

(Tr., Vol. III, p. 536, line 19 - p. 537, line 2).

Beckham had taken the position that a hearing was mandatory. In explaining his view of the law, the judge declared

> I don't think (the Commission) had to open the door for a hearing and say, "come on in Mr. Beckham." I don't think they could lock the door and say, "Mr. Beckham, you can't come in for a hearing."

(Tr., Vol. III, p. 501, lines 11-14).

The instruction and the judge's ruling on Beckham's objection demonstrate that the judge plainly informed the jury the holding of the statutory pretermination hearing was not an affirmative duty. The jury was told the Commission did not have to come forward and invite Beckham to a hearing.

If the Defendants thought the instruction unclear or incorrect, they ought to have objected. As the issue went to the jury, the jury might have found a request by Beckham was necessary, but that the circumstances surrounding his discharge denied him even the opportunity to request a hearing.

Beckham was discharged with haste. The Defendants now claim they would have given him a hearing if he had requested one. That protestation loses some force, however, when voiced by a Police Commission member

who testified he attended the session which fired Beckham, when the minutes of that session show him absent. (J.A. Tr., p. 365, lines 1-22; p. 366, lines 2-20; p. 368, lines 2-18). The jury was not required to believe those who testified they would have given Beckham a hearing. If any inference is to be drawn, it must be that they would have refused him a hearing.

In overruling this point on the motion for judgment notwithstanding the verdict, the trial court noted

> Mr. Harris and the members of the Police Commission presumably know that their procedure required that he be allowed a hearing. They knew about that. Nobody said that, "I would have offered him a hearing but I didn't think he wanted one. I though his actions indicated if we offered him one he wouldn't have taken it."

(Tr., Vol IV, Motion j.n.o.v., p. 28, lines 9-14).

The Defendants, finally, have overlooked the actual issue connected with a due process hearing. The statutory hearing is a right separate and apart form the constitutional right to notice and opportunity to be heard. The trial court charged extensively on this constitutional right to due process. (Tr., p. 540, line 13 - p. 543, line 13). It was for the jury to decide whether the circumstances of Beckham's firing afforded him an opportunity to be heard.

The Defendants did not ask for a special verdict on the necessity of a request for a hearing and waiver by failure to request. The jury was able to assess all the circumstances attending Beckham's firing. Their finding in his favor must be interpreted as a finding that, if a request

was necessary, the right was nevertheless not waived because Beckham had no opportunity to request a hearing.

B. (1) THE EVIDENCE SUPPORTS THE JURY'S FINDING THAT BECKHAM WAS DEPRIVED OF A LIBERTY INTEREST BECAUSE HE DID NOT ADMIT MISCONDUCT.

Beckham was fired, according to the press release, because he was an "active participant in furnishing false information to (the Police) Department." (J.A., p. 536, #2). In addition Dunn and Harris told reporter Bob Bloodworth that Beckham had given false testimony at the preliminary hearing. That incorrect information was published in the Myrtle Beach Sun News. Beckham did not testify at the preliminary hearing at all. Furthermore, Beckham was not a conspirator, as implied in the press release.

The Defendants assert Beckham has no disagreement with the Police Department's charge that he furnished false information. They claim that he had become his own accuser. Beckham testified, however, that the allegations of the affidavits were in fact true. (J.A., p. 130, pp. 15-20).

The search warrant affidavit states that Foreman saw Jerry High at the Ship's Wheel Seafood House. That is exactly what Foreman told Beckham. (J.A., p. 134, lines 2-20). There is no false information furnished in that affidavit. And that is what was in the hands of the Chief of Police when he fired Beckham.

The Defendant's reliance on McNeill v. Butz, 480 F.2d 314 (4th Cir. 1973) is particularly inapt. McNeill admitted the charges in a hearing granted him to respond. Before he was terminated, McNeill sought and received a hearing. He appeared personally

and with counsel. By affidavit, McNeill substantially conceded the charges against him. In this present suit, Beckham spent several hours testifying and denied that he furnished false information to the Police Department. (See J.A., p. 184, line 17 - p. 185, line 2).

According to Dunn, Harris, and the initial newspaper reports, Beckham also testified falsely at the preliminary hearing. (J.A., p. 248, line 18 - p. 250, line 5; Pl. Ex. #28, Cols. 4 & 5, J.A., p. 537; Pl. Ex. #29, Col. 4, J.A., p. 538). That false charge Beckham also denied.

It can hardly be said now that an opportunity to confront his accusers could avail Beckham nothing. He has disputed the charges. After listening to testimony for three days and examining the exhibits, the jury believed Beckham.

C. BECKHAM HAD A STATE-CREATED PROPERTY INTEREST IN HIS EMPLOYMENT AS AN HORRY COUNTY POLICEMAN.

Beckham went to trial claiming he had been deprived of property without the due process of law. The judge charged the jury on the meaning of property under the law and explained to them that they might find a property interest had been created in this case. This charge was heard by the Defendants entirely without objection. The jury found Beckham had enjoyed a property interest in his employment and awarded him damages. It is assumed the jury paid heed to the facts and followed the Court's instructions. Crocket Engineering Co. v. Ehret Magnesia Mfg. Co., 156 F.2d 817 (D.C. Cir. 1946).

The court charged

> While property interest protected under the 14th Amendment may take

> many forms, it is clear that to have a property interest, a person must have more than an abstract need or desire for the property. He must have more than a unilateral expectation to it. What he must have is a legitimate claim of entitlement to it. Property interests that receives [sic] protection under the 14th Amendment are not created by the Constitution of the United States. It protects them and says you can't take them without due process of law, but it doesn't create the property interests themselves, just as the land your home is on, the constitution doesn't create that. Any such property interests are created and defined by existing rules or understandings but stem from an independent source, independent of the Constitution, such as state law.

(Charge to Jury, Tr. Vol. III, p. 534, lines 8-22).

The jury, therefore, heard that Beckham must have more than a unilateral expectation of continued employment. He must have a legitimate claim of entitlement to continued employment. That property interest could be created by existing rules

or understandings, independent of the Federal Constitution.

The Defendants do not claim this instruction was erroneous. Indeed the language accuracy expressed the law. See Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

Beckham testified he began service with the Horry County Police Department as a probationary officer, before being awarded permanent status. (J.A., p. 106, lines 9-20). He testified both the Department and he understood that once he was on permanent status, he could be fired only for cause. (J.A., p. 106, lines 13-20). By the same token, Beckham was obliged to give the Department fair notice before resigning. (J.A., P. 106, lines 18-20).

Beckham's testimony, then, was that between the Department and himself, there were existing rules and understandings

that he could be fired only for cause. In further support of Beckham's testimony, Chief Harris's testimony shows no officer had ever been fired or even suspended except for cause. (J.A., p. 284, line 22 - p. 288, line 19). Also, the Police Department Personnel Manual sets out several pages of guidelines for Disciplinary action. (Pl. Ex. 1, J.A., p. 397, 420-423). These Guidelines group certain offenses and describe the disciplinary action that can be imposed with each offense or combination of offenses. Besides these four pages of Guidelines, the Personnel Manual adds three (3) pages of Additional Rules of Conduct. (J.A., pp. 424-426). Cf. Barnett v. Housing Authority of the city of Atlanta, 707 F.2d 1571 (11th Cir. 1983) (regulations limiting power to discharge created property interest).

The Personnel Manual speaks specifically about a probationary period. (J.A., p. 408, Pr. 3). That paragraph makes a point of reserving the right to terminate a probationary employee at any time, "if it is determined that his performance is not up to expected levels." Thus it appears even a probationary employee may expect to continue unless cause exists for his termination.

***

Beckham testified both he and the Police Department understood he would be fired only for cause. Under the principles just set out, it is presumed the jury believed him and found a property interest on that issue. The statements of the Personnel Manual are evidence in further support of the jury's decision. Beckham had an understanding with the Police Department that gave him a legitimate expectation of

continued employment. It was understood he would not be terminated except for cause. In addition, both the statute and the Policy Manual were clear that he must "first" be allowed a hearing "prior" to his removal. The verdict is supported by evidence in abundance.

The trial judge also charged the jury thatthey could find a property interest had been created by the Police Department's adoption of policies and procedures. (Instructions to Jury, Tr., Vol. III, p. 535 lines 14-20). Although he later specifically mentioned the right to a pretermination hearing, his charge does not limit the jury's consideration to the hearing right only. Thus the jury was free to consider Beckham's status as a permanent rather than a probationary employee, to consider the testimony that no suspensions of firings had taken place except for cause, to consider

that Beckham's performance as a police officer would be judged according to the duties and standards of conduct set forth at length in the Personnel Manual, and to observe that both Act No. 21 and the Personnel Manual stated that no employee could be terminated without being given a hearing first.

Again, this portion of the charge was not objected to by the Defendants and is not challenged in this appeal.

The judge noted for the jury that the manual containing these policies and procedures was in evidence. (Instructions to Jury, Tr. Vol. III, p. 535, lines 21-23). Therefore, the jury had before them evidence that Beckham's employment constituted a property interest by its own terms. The judge's unchallenged instruction and the sufficiency of this evidence combine to form

a second ground for upholding the jury's finding of a property interest.

By contrast, the Defendants present only one ground for undoing the jury's verdict. Defendants now attack a single portion of the court's charge on the property interest. The trial judge quoted the jury a passage form Prince v. Bridges, 537 F.2d 1269, 1272 (4th Cir. 1976):

> A constitutional guarantee of due process arises when a public employee is discharged in violation of the procedural rule designed to protect him. In such a situation he has a legitimate property interest to protect.

Frances K. Prince was a governmental employee serving at the "will and pleasure" of Mr. Bridges, subject only to the provisions of a merit plan. 537 F.2d at 1271. The Court wrote in that case also that "Mrs. Prince's 'property' interest in her continued employment was her right to be discharged in accordance with the

statutory procedures provided by the merit plan." 537 F.2d at 1272.

The Court found Mrs. Prince had enjoyed the procedural protections of the statute and thus had not been deprived of her property interest without due process of law.

Prince is direct authority to sustain the verdict for Beckham. Beckham, too, had a statutory protection. His, however was denied. As fired employees, Beckham's and Mrs. Prince's positions are quite opposite. She suffered no infringement of her property right; Beckham did. The verdict for Beckham is sustainable under Prince, which supplies a third ground of affirmance.

APPENDIX G

Seventh Amendment, U. S. Constitution:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

---

42 U.S.C. §1983 (1982):

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Rule 50 of the Federal Rules of Civil Procedure

(b) **Motion for Judgment Notwithstanding the Verdict**

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any

judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgments as if the requested verdict had been directed or may order a new trial.

South Carolina Act No. 21 of 1959 (uncodified)

An Act To Provide For A Police Commission For Horry County And To Make An Appropriation Therefor.

***

SECTION 2. Powers and duties of commission - duties of chief and policemen. The terms of the county police, including the chief, shall be at the pleasure of the commission and the commission shall have exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the commission pending such hearing.

APPENDIX H

A. Cases in which the Fourth Circuit had found insufficient evidence to support a jury verdict.

1. Beckham v. Harris, 756 F.2d 1032

2. Clarkson v. Orkin Exterminating, 761 F.2d 189.

3. Colonial Lincoln-Mercury, Inc. v. Musgrave, 749 F.2d 1092.

4. Jones v. Dodson, 727 F.2d 1329.

5. Jones v. Meat Packers Equipment Co., 723 F.2d 370.

6 Jurgensen v. Fairfax County, Va., 745 F.2d 868.

7. Martin v. Fleissner GMBH, 741 F.2d 61.*

8. Redic v. Gary H. Watts Realty Co., 762 F.2d 1181.

9. Sherril White Construction Company, Inc. v. South Carolina National Bank, 713 F.2d 1047.*

10 Sit-Set A.G. v. Universal Jet Exchange, Inc. 747 F.2d 921.*

* Cases marked with an asterisk belong in both groups.

11. Wellington v. Daniels, 717 F.2d 932.

B. Cases in which the Fourth Circuit found sufficient evidence to support a jury verdict.

1. Abasiekong v. City of Shelby, 744 F.2d 1055.

2. Bly v. Otis Elevator Co., 713 F.2d 1040.

3. Collins v. Straight, Inc., 748 F.2d 916.

4. Evington v. Forbes, 742 F.2d 834.

5. Fleet Transport Company, Inc. v. Mullis, 727 F.2d 327.

6. Lipscomb v. Memorial Hospital, 733 F.2d 332.

7. Management Systems Associates, Inc. v. McDonnell Douglas Corporation, 762 F.2d 1161.

8. Martin v. Fleissner GMBH, 741 F.2d 61.*

9. McElveen v. County of Prince William, 725 F.2d 954.

10. Peacock v. J.C. Penney Company, Inc., 764 F.2d 1012.

11. Raferty v. Scott, 756 F.2d 335.

12. Sherrill-White Construction Company, Inc. v. South Carolina National Bank, 713 F.2d 1047.*

13. Sit-Set, A.G. v. Universal Jet Exchange, Inc., 747 F.2d 921.*

14. Slakan v. Porter, 737 F.2d 369.

15. Tousley v. North American Van Lines, 752 F.2d 96.